

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kelly Dean McTighe,

Case No. 01-30886 - DDO

Debtor.

**NOTICE OF HEARING, VERIFIED MOTION FOR TURNOVER
TO THE TRUSTEE OF PROPERTY OF THE ESTATE AND
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

TO: The debtor and other entities specified in Local Rule 9013-3.

1. Nauni Jo Manty, Trustee of the bankruptcy estate of the above-named Debtor ("Trustee"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on **October 21, 2004 at 11:00 a.m.**, before The Honorable Dennis D. O'Brien, Judge of the U.S. Bankruptcy Court, in Courtroom Number 228A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 18, 2004, which is three days prior to the hearing (excluding Saturdays, Sundays and holidays), or filed and mailed not later than October 12, 2004, which is seven days before the hearing (excluding Saturdays, Sundays and holiday). **IF A RESPONSE IS NOT TIMELY FILED, THE COURT, IN ITS DISCRETION, MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition

commencing this case was filed under Chapter 13 on March 2, 2001 and converted to a case under Chapter 7 on November 14, 2002. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 541(a) and 542(a). This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The Trustee requests relief with respect to turnover of copies of the Debtor's 2002 state and federal income tax returns, and refunds, if any.

MOTION FOR TURNOVER

6. The 341 meeting of creditors was held on December 23, 2002. The Trustee has requested turnover and by letter. See copy of the Trustee Administrator's January 8, 2004 & March 23, 2004 letters to the Debtor's attorney attached hereto as Exhibit A. The Trustee has received no response to her letters. In order to fully administer the estate, the Trustee must obtain the requested 2002 state and federal tax returns, and refunds, if any.

7. The Trustee also requests attorney fees in the amount of \$500.00.

MEMORANDUM OF LAW

The law pertinent to this motion is found in 11 U.S.C. §§ 541(a) and 542(a). 11 U.S.C. §541(a) provides that:

The commencement of a case under § 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. §542 provides that:

- (a) Except as provided in subsections (c) or (d) of this section, an entity other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under Section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The Trustee requests that the Court order the Debtor to turn over the 2002 state and federal tax returns, and refunds, if any.

WHEREFORE, the Trustee requests that this Court, issue an order that Debtor turn over his 2002 state and federal tax returns, and refunds, if any. The Trustee also requests attorney fees in the amount of \$500.00 payable from Debtor.

Dated: September 23, 2004.

RIDER BENNETT LLP

By /e/ Nauni Jo Manty

Nauni Jo Manty (#230352)
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402
(612) 340-7950



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Nancy L. Jaeckels
Trustee Administrator
(612) 335-3930
nljaeckels@riderlaw.com

January 8, 2004

Mr. Craig Andresen
2001 Killebrew Drive
Suite 330
Bloomington, MN 55425

Re: Kelly D. McTighe
Bkcy Case No. 01-30886

Dear Mr. Andresen:

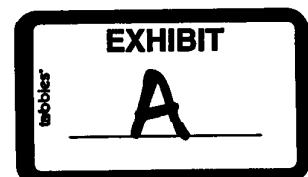
Please instruct the Debtor to turnover to the Trustee, at the above address, copies of his 2002 state and federal tax returns. Any refunds received may be property of the bankruptcy estate.

Very truly yours,

RIDER BENNETT, LLP

By Nancy L. Jaeckels
Nancy L. Jaeckels

NLJ





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Nancy L. Jaeckels
Trustee Administrator
(612) 335-3930
nljaeckels@riderlaw.com

March 23, 2004

Mr. Craig Andresen
2001 Killebrew Drive
Suite 330
Bloomington, MN 55425

Re: Kelly D. McTighe
Bkcy Case No. 01-30886

Dear Mr. Andresen:

This is a follow up to my letter dated January 8, 2004. Please instruct the Debtor to turnover to the Trustee, at the above address, copies of his 2002 state and federal tax returns. Any refunds received may be property of the bankruptcy estate.

Please respond to this letter on or before March 31, 2004.

Very truly yours,

RIDER BENNETT, LLP

By 
Nancy L. Jaeckels

NLJ\

cc: Kelly D. McTighe
1266 Hague Ave
St. Paul, MN 55104

VERIFICATION

I, Nauni Jo Manty, Trustee and movant named in the motion, declare under penalty of perjury that the facts contained in the foregoing motion are true and correct to the best of my knowledge, information and belief.

Dated: September 23, 2004.

/s/ Nauni Jo Manty
Nauni Jo Manty, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kelly Dean McTighe,

Case No. 01-30886 - DDO

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Donna Voth, declare under penalty of perjury that on September 23, 2004, I served copies of the attached *Notice of Hearing, Verified Motion for Turnover to the Trustee of Property of the Estate and Memorandum of Law in Support of Motion* by first class U.S. mail, to the following parties:

Kelly Dean McTighe 1266 Hague Avenue St. Paul, MN 55104	United States Trustee 1015 U.S. Courthouse 300 So. Fourth St. Minneapolis, MN 55415
Craig W. Andresen, Esq. 4445 W. 77 th Street Suite 203 Edina, MN 55435	

Executed on: September 23, 2004.

Signed: /e/ Donna Voth

Donna Voth
Legal Administrative Assistant
Rider Bennett LLP
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kelly Dean McTighe,

Case No. 01-30886

Debtor.

ORDER

The above-captioned matter came on before this Court on the motion of the Trustee, Nauri Jo Manty, for the turnover of Debtor's 2002 state and federal tax returns, and refunds, if any.

Based upon all of the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Trustee's Motion for Turnover is granted.
2. The Debtor shall turn over the Debtor's 2002 state and federal tax returns, and refunds, if any within five (5) days.
3. The Debtor shall also pay the Trustee \$500.00 as and for attorney's fees awarded in bringing this motion.

Dated: _____, 2004.

BY THE COURT

Dennis D. O'Brien
Judge, United States Bankruptcy Court